

From: Ehrich, Delmar R.
Sent: Thursday, April 02, 2009 5:28 PM
To: Xidis, Claire
Cc: Jorgensen, Jay T.; George, Robert; John Elrod; rsanders@youngwilliams.com; Theresa Noble Hill; Walker, Todd P.; Dolan, Christopher H.; Scott McDaniel; James Graves; Louis Bullock; Richard Garren; Mark_Quayle@cargill.com; Walker, Todd P.; Jones, Bruce; Kleibacker Lee, Krisann C.; Daniel.Lennington@oag.ok.gov; Trevor.Hammons@oag.ok.gov; Kelly.Burch@oag.ok.gov; David Riggs; David Page; Richard Garren; Moll, Ingrid; Baker, Fred; Ward, Liza; Sharon Gentry; bblakemore@bullock-blakemore.com; Louis Bullock; Bob Nance; Herber, Daniel J.; Deihl, Colin C.; Triplett, Eric J.
Subject: RE: Stratus depositions next week

Claire --

In our call just now, you failed to explain the plaintiff's inconsistent position --to ask for depositions out of time when it benefits the state, but to refuse if it might benefit the defendants.

You contend that the defendants' should have brought this issue to the court's attention earlier. I disagree. I make every effort to avoid involving the busy Court in such discovery disputes. I had hoped and expected that the plaintiff would have a similar aim.

Del

From: Ehrich, Delmar R.
Sent: Thursday, April 02, 2009 16:53
To: 'Xidis, Claire'
Cc: Jorgensen, Jay T.; George, Robert; John Elrod; rsanders@youngwilliams.com; Theresa Noble Hill; Walker, Todd P.; Dolan, Christopher H.; Scott McDaniel; James Graves; Louis Bullock; Richard Garren; Mark_Quayle@cargill.com; Walker, Todd P.; Jones, Bruce; Kleibacker Lee, Krisann C.; Daniel.Lennington@oag.ok.gov; Trevor.Hammons@oag.ok.gov; Kelly.Burch@oag.ok.gov; David Riggs; David Page; Richard Garren; Moll, Ingrid; Baker, Fred; Ward, Liza; Sharon Gentry; bblakemore@bullock-blakemore.com; Louis Bullock; Bob Nance; Herber, Daniel J.; Deihl, Colin C.; Triplett, Eric J.
Subject: RE: Stratus depositions next week

Claire--

I have sought to avoid wasting the parties' resources on taking unnecessary depositions. The number and timing of these depositions has always been linked to the plaintiff's providing a complete Rule 26(a) disclosure for all seven Stratus experts so that defendants can determine which to depose. I disagree, therefore, with your characterization of my having accepted and then rejected deposition dates several times.

Nor have I been unwilling to provide the same Rule 26(a) disclosure for the defendants' damages-related experts I seek from you. Unlike the case with your list of chapter authors (which has as many as six per chapter), plaintiff can determine from the defendants' March 31 disclosure the roles of the defendants' experts from the defendants' March 31 Rule 26 disclosure. You can now make a decision as to which authors to depose, as Rule 26(a) contemplates.

There is a straightforward way to avoid our taking depositions next week that may prove to have been unnecessary. That is for the plaintiff to agree that depositions of the Stratus authors we determine are necessary after the court rules may be taken out of time. The defendants already agreed that plaintiff could take the defendants' damages experts' depositions out of time, notwithstanding that plaintiff was unwilling to extend that courtesy to defendants as the the Stratus depositions.

I note that plaintiff is certainly willing to make such requests when doing so favors it. In addition to the request to take the defendants' damages experts out of time, the plaintiff today stated it was willing to produce David Payne, the plaintiffs ability to pay damage expert, out of time, at the end of April --not, I note, out of a desire to accommodate the defendants' schedule (because, after all, we had asked for deposition dates for Mr. Payne prior to April 16), but because plaintiff believes that Mr. Payne needs additional information from defendants before he will be ready for his deposition at the end of April. Further, Plaintiff has already agreed to the filing of a joint motion earlier today relative to several other witnesses.

In short, defendants have been willing to try to accommodate the plaintiff, but have received nothing but demands, threats and refusals when we have asked to delay the depositions of the Stratus authors pending the Court's ruling on our motion to strike or for a complete Rule 26(a) disclosure.

Perhaps you can explain this inconsistent position when I call you in a few minutes.

Del

From: Xidis, Claire [mailto:cxidis@motleyrice.com]

Sent: Thursday, April 02, 2009 13:53

To: Ehrich, Delmar R.

Cc: Jorgensen, Jay T.; George, Robert; John Elrod; rsanders@youngwilliams.com; Theresa Noble Hill; Walker, Todd P.; Dolan, Christopher H.; Scott McDaniel; James Graves; Louis Bullock; Richard Garren; Mark_Quayle@cargill.com; Walker, Todd P.; Jones, Bruce; Kleibacker Lee, Krisann C.; Daniel.Lennington@oag.ok.gov; Trevor.Hammons@oag.ok.gov; Kelly.Burch@oag.ok.gov; David Riggs; David Page; Richard Garren; Moll, Ingrid; Baker, Fred; Ward, Liza; Sharon Gentry; bblakemore@bullock-blakemore.com; Louis Bullock; Bob Nance

Subject: Stratus depositions next week

Delmar -

Defendants' position regarding the depositions of the Stratus authors next week remains unclear. You have accepted these dates, then rejected them, then stated in Cargill's filings that they "may take place as early as April 6, 2009." (Dkt. # 1938). We have not yet heard from the Court on Defendant's motion to strike, or motion for extension of time, but regardless of when we hear from the Court or what its rulings are, we must know by no later than noon EST this Friday, April 3, whether Defendants intend to proceed with the Stratus depositions next week (i.e., Chapman on April 6, Tourangeau on April 8, and Morey on April 10) so that people can make appropriate arrangements and plan their schedules accordingly.

We need to know, unconditionally, whether Defendants intend to take these depositions by noon EST on Friday, April 3. If you do not respond by that time, we will have no choice but to assume that Defendants will not proceed with these depositions next week.

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